

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

CHALLENGE UNLIMITED, INC., RESIDENTIAL
OPTIONS, INC., AND SPECIALIZED PROFESSIONAL
SERVICES, INC., d/b/a ALPHA INDUSTRIES

Employer

and

Case 14-RC-12507

AFSCME COUNCIL 31, AFL-CIO (AMERICAN
FEDERATION OF STATE, COUNTY & MUNICIPAL
EMPLOYEES COUNCIL 31)

Petitioner

REGIONAL DIRECTOR'S SUPPLEMENTAL DECISION

On July 15, 2004, the Board granted the Employer's Request for Review of the Decision and Direction of Election that issued on June 15, 2004, directing elections in a residential unit, a developmental training (DT) unit, and a production unit. On July 16, 2004 elections were conducted in the units as directed and a tally of ballots issued for each unit disclosing that a majority of the valid votes counted plus challenged ballots had not been cast for the Petitioner. The Petitioner filed objections to the conduct of the elections on July 23, 2004. The objections are pending investigation. By order dated July 15, 2004, the Board remanded the matter for reconsideration and further explanation regarding the exclusion of the vocational rehabilitation (VR) employees and the employees performing service work for US Steel, Conoco/Phillips, and Guaranty Title from the units found appropriate. Upon further consideration and for the reasons set forth more fully below, I conclude that the Petitioner's requested residential, DT, and production units, as previously set forth in the Decision and Direction of Election, are appropriate units for collective bargaining.

It is well settled that a labor organization need not seek to represent the most appropriate unit or most comprehensive unit, but only an appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409 (1950). Because a unit is not required to be the only appropriate unit or the ultimate unit, the Board's inquiry ends if the requested unit is appropriate. To determine whether multi-location units such as these are appropriate, the Board traditionally considers various community of interest factors including past bargaining history; general working conditions, wages, and benefits; degree of function; interchange and contact among employees; and work situs. See *Alamo Rent-A-Car*, 330 NLRB 897, 897-898 (2000). The Petitioner's desires, though not dispositive, are a relevant consideration. *Florida Casino Cruises, Inc.*, 322 NLRB 857, 858 (1997); *Airco, Inc.*, 273 NLRB 348 (1984).

Here, the Petitioner does not seek to represent the Employer's VR employees or any employees performing service work pursuant to service contracts with area businesses, including U.S. Steel, Conoco/Phillips, and Guaranty Title. Thus, the inclusion of these employees is required only if they share such a substantial community of interest with employees in the requested units that their exclusion would destroy the appropriateness of those units. As discussed below, I conclude that each of the Petitioner's requested units is appropriate without inclusion of these additional employees. Each of the Petitioner's requested units conforms to the Employer's administrative and operational organization. The Board has long held that "[T]he manner in which a particular employer has organized his plant and utilizes the skills of his labor force has a direct bearing on the community of interest among various groups of employees in the plant and is thus an important consideration in any unit determination." See *Funky, Inc.*, 254 NLRB 372, 372 (1981) (citation omitted).

The Petitioner's requested units are not simply arbitrary groupings of employees but are based upon the Employer's corporate, administrative, and operational structure.

Employees in the requested units are subject to, at a minimum, separate first-line supervision by supervisors who possess substantial autonomy. Thus, the fact that the Employer's central administration may have overall authority with respect to labor relations is not dispositive. Each of the requested units comprises a sufficiently homogenous and cohesive group with a distinct community of interest and is, therefore, appropriate.

To address the Board's concerns it is helpful to begin with an overview of the Employer's operations and administration/supervisory structure. The record reflects that for purposes relevant here there are five operating departments or divisions engaged in somewhat distinct corporate activities – Swansea Developmental Training Center and Alton Developmental Training Center, Residential Options, Operations Production Contracts, Vocational Rehabilitation Services, and Community Services Contract.¹

Swansea and Alton Developmental Training Centers (Challenge Unlimited)

Employees in this division, plus the drivers included for the reasons set forth in the original decision, constitute the DT unit. DT Center functions and unit employee functions are set forth in the original decision, but in general these centers provide work readiness workshops and life skills training programs. Unit employees report to a supervisory/management structure consisting of a separate program manager at each facility, the vice president of developmental training, and the executive vice president of life services.

Residential Options (Residential Options, Inc.)

Employees in this division constitute the Residential Unit; employees in this division operate the Employer's group homes. Employees in this unit report to a

¹ This breakdown is based on organizational charts presented by the Employer as modified by other evidence. The evidence reflects that not all positions are currently filled. For example, there is currently no vice president in the VR division.

manager at each home, as well as certain departmental managers, the vice president of residential options, and the executive vice president of life services.

Operations Production Contracts (Alpha Industries)

Employees in this division constitute the Production Unit. The division consists of three production operations in Granite City, Illinois. Employees in this division report to supervisors, one of two local project managers, and the executive vice president of sales and marketing.

Vocational Rehabilitation Services (Challenge Unlimited)

Employees in this division are excluded from all three units, and include the VR employees that are a subject of this remand. Vocational Rehabilitation employees function to place and facilitate the performance of person receiving services (PRS) in a variety of governmental and private sector facilities through contracts or agreements with the Employer, including the three locations noted in the Board's decision.² Employees in this division report to the director of employment services and the executive vice president of community rehabilitation services.³

Community Service Contracts (Challenge Unlimited and Alpha Industries)

Included in this division are the employees and PRS working pursuant to service contracts at various locations including U.S. Steel, Conoco/Phillips, and Guaranty Title. They report to numerous first and second line supervisors, various managers, and the vice president of operations.

² Although the Board's decision describes the workers at the three locations as employees of Alpha Industries, the record reflects that Guaranty Title is under Challenge Unlimited.

³ The evidence at the hearing herein shows that the VR employees are currently reporting to a manager, and then to the executive vice president who is also over the DT and residential units. This was not the case at the time of the first hearing in that there was then a separate executive vice president over this division, and it is not clear from the record whether the Employer has made a permanent change.

The VR Employees

The Employer's VR employees do not share a sufficiently significant community of interest with employees in the residential unit, the production unit, or the DT unit to compel their inclusion into any of these requested units. The Employer's VR department is a part of Challenge Unlimited, Inc. (Challenge). The VR employees clearly do not share a substantial community of interest with employees in the residential and production units. The Employer's residential unit is comprised of employees working at the Employer's group homes employed by the separately incorporated Residential Options, Inc. (Residential). The Employer's production operations, comprised of three separate production facilities, are part of the separately incorporated Alpha Industries (Alpha). These operations are geographically separated from the Employer's VR facility. The residential and production unit employees perform distinctly different duties at different locations, under separate supervision. There is little, if indeed any, work-related contact between the VR employees and the employees in either of these units. The Employer's exhibits regarding temporary and permanent transfers do not reveal any transfers involving VR employees. Accordingly, there is not a substantial community of interest between the VR employees and the employees in the residential and production units.

The VR employees do, however, share a somewhat greater community of interest with the DT employees. The DT and VR employees are employed by Challenge, are subject to a similar compensation scheme, and some employees perform similar work. Two of the Employer's nine VR employees have offices at the Employer's DT facility in Swansea, Illinois. Nonetheless, I find that these commonalities do not override the community-of-interest factors which distinguish the two groups. The DT and VR operations comprise separate departments of Challenge, which is reflected by the physical separation of the VR and DT operations in separate facilities. At each of the

separate facilities, there is a different manager who supervises employees and oversees the day-to-day operations. Even the two VR employees at the Swansea DT facility are not supervised by the DT manager and do not perform any DT work; their presence at the DT facility is merely a result of space considerations. The work of the employees in the DT centers focuses on the training of PRS in a sheltered setting. PRS are trained in job skills but also a variety of other life skills necessary if they are to live independently. Almost all of the training and thus the employees' work occurs in the DT center from 8 a.m. to 4:30 p.m., pursuant to individual programs for each PRS. There are two job coaches, one in each DT center, who work with DT employees who are placed in jobs in the community, as do the VR employees, but even the DT job coaches spend about half of their time performing training in the DT centers.⁴

It appears from the record as a whole that the function of the VR division is to obtain positions for and place PRS who have a sufficiently high level of function and independence in regular employment, much of it under the Employer's service contracts. While most of the VR employees do work directly with PRS performing work under service contracts and worker placement agreements, they perform their job coaching away from the Employer's facilities in a normal workplace setting moving from site to site. VR job coaches do not work set hours, because the PRS they work with may work different shifts and on weekends. As noted above, the record does not reflect any temporary or permanent transfers involving the Employer's VR employees. The distinction between VR and DT employees is underscored by the lack of evidence of any significant work-related contact between these groups as well as the lack of interchange.

⁴ DT job coaches actually take PRS to the community job sites, where they train, supervise, monitor, and assist PRS in their work, remaining with them throughout. In this respect, the function of the DT job coaches differ from those of the VR employees.

Because the Petitioner need only select an appropriate unit, the DT unit is not rendered inappropriate simply because a combined unit of DT and VR employees is also an appropriate unit, or indeed, perhaps even a more appropriate unit. In reaching this conclusion, I rely upon: (1) the Employer's administrative and operational separation of the DT and the VR operations; (2) the separate supervision of the VR employees and the DT employees; (3) the lack of any temporary or permanent interchange between employees in the VR and the DT departments; (4) the lack of significant work-related interaction between these groups of employees; and (5) differences in the nature, locations, and hours of work⁵ between the two groups.

The Service Employees Working At U.S. Steel, Conoco/Phillips and Guaranty Title

As noted above, the employees at the three locations in question are part of the Community Service Contracts Division. That division includes approximately 145 persons employed by the Employer and 178 PRS, all of whom work under service contracts at the locations of other governmental and private sector employers some as far away as Springfield, Illinois and Fort McCoy, Wisconsin. Most such employees provide janitorial or food services for the host employer. The Employer employs one janitor at Guaranty Title in Edwardsville, Illinois; two mailroom workers at Conoco/Phillips in Wood River, Illinois; and eight janitors, one mailroom driver, and one mailroom worker at U.S. Steel in Granite City, Illinois. All three locations are under the same manager, who is also over three other "Challenge" sites for governmental agencies. In the original decision, I concluded that the requested units are appropriate without inclusion of these service employees. In particular, there is no real question that the employees in the residential and DT units share a sufficiently distinct community of interest from the

⁵ Some of the VR employees do work a regular schedule but, as noted, the employees who work with PRS have variable schedules.

service employees at issue. The residential and DT employees perform distinctly different duties and functions, at different locations, under separate supervision, without evidence of significant interchange or contact. Likewise, an analysis of the relevant factors establishes that the production unit employees also share a sufficiently distinct community of interest apart from these service employees sufficient to justify their exclusion from that unit.

The production unit is comprised of employees performing production work at the Employer's three Alpha production facilities. Though the Employer describes the U.S. Steel and Conoco/Phillips sites as Alpha facilities, there is no operational nexus between these sites and the Alpha production facilities. In fact, the Employer's organizational charts reflect the Employer's administrative and operational separation of its production and service operations. All of the Employer's service contracts, including the Alpha contracts with U.S. Steel and Conoco/Phillips, are administered by the Employer's vice president of operations. This position does not have any managerial responsibilities over the Employer's production operations. Moreover, the service employees at U.S. Steel, Conoco/Phillips, and Guaranty Title share the same managerial structure with Challenge employees working pursuant to service contracts with several government agencies and private sector employers. The difference in the daily experience of the production employees and the service employees reflects the lack of any substantial shared community of interest. These groups perform work at different locations, under different supervision. There is no evidence of significant work-related interaction. There is no evidence of a significant number of temporary or permanent transfers. While the skills and duties of some of the production employees, particularly the janitors, equate to those of the excluded employees at the sites involved herein, production employees doing janitorial work function as an integral part of the Employer's production process. The mere commonality of skills and duties is not sufficient to overcome the other

differences in the community of interest between the two groups. See, e.g., *Orr Iron, Inc.*, 207 NLRB 863, 867 (1973); *Oriole General Cleaning Services, Inc.*, 186 NLRB 853 (1970); *The Sheffield Corporation*, 123 NLRB 1454 (1959). In sum, the community of interest between the production employees and this particular group of service employees is not so substantial that it requires the inclusion of these service employees in the production unit. I rely in particular on differences in supervisory and administrative structure, general difference in function, and the lack of evidence of contact and interchange.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., (EST) on September 1, 2004. The request may **not** be filed by facsimile.

Dated: August 19, 2004
at: Saint Louis, Missouri

/s/ Ralph R. Tremain
Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14